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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTOINE L. WASHINGTON,

Defendant and Appellant.

B175246

(Los Angeles County  
Super. Ct. No. MA026238)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Thomas R. White, Judge. Affirmed.

Richard L. Fitzer, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Margaret E.  
Maxwell, Supervising Deputy Attorney General, and Erika D. Jackson, Deputy  
Attorney General, for Plaintiff and Respondent.

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After his motion to quash and traverse a search warrant was denied, Antoine Lamar Washington pled no contest to one count each of possession for sale of cocaine base, possession for sale of marijuana (each with an allegation that the offense was committed for the benefit of a criminal street gang, which he admitted), and child abuse. Washington was sentenced to state prison for a term of seven years. He appeals, claiming his challenge to the search warrant should have been sustained. We disagree and affirm the judgment.

## **BACKGROUND**

### **A.**

On March 7, 2003, Los Angeles County Sheriff's Detective William P. Costleigh sought authorization to search the house Washington shared with Candi Williams at 44814 Spearman Avenue in Lancaster. In his supporting affidavit, Detective Costleigh said he had been a peace officer for 23 years, and had been assigned for two years to the "Safe Streets Bureau," a specialized gang unit. He had attended 200 hours of instruction on street gangs, had previously testified as a gang expert, had investigated thousands of gang-related crimes, and had been involved in hundreds of gang arrests.

As his "statement of probable cause," Detective Costleigh described the following events. On **August 31, 2002**, Crip gang member Germaine Citizen was shot in the neck as he stood outside 45533 Corkwood Avenue in Lancaster, an area (between Avenues H-8 and H-12) known to the detective to be frequented by Crips and to be used by Crips for narcotics sales. Citizen was mortally wounded but managed to tell Deputy Harbeson, "I'm dying man. Twan and them shot me." An expended .45-caliber bullet jacket was found at the scene,

and a .45-caliber bullet was removed from Citizen's body. From police records, Detective Costleigh identified "Twan" as Washington, a Pacoima Piru Blood gang member who lived less than a mile from the shooting.

Detectives Costleigh and Graves interviewed Citizen's wife or girlfriend, Rosalind, who reported that Citizen had had several fights with rival gang members in the three months preceding his death. On one occasion, Citizen came home bleeding from multiple injuries, and told Rosalind he had been "jumped" in a convenience store by rival gang members "Twan" and "Wicked." On another occasion, Citizen told Rosalind about an altercation he had with "Mario," and said "he would have to kill 'Mario' or be killed by him." Because of these "problems," Citizen had been staying with his mother in Compton, and only returned to Lancaster to visit Rosalind and their son. Detective Costleigh identified "Mario" as a Blood named Tommy Crane who had been seen in the company of Washington's younger brother, Travis "Slim" Washington.

At about 10:00 p.m. on **October 31**, Deputy Patterson heard gunshots near Corkwood and Avenue H-12, and stopped a car driving recklessly out of the area. The driver, Anthony "Nucky" Anderson, and the passenger, Deshawn "Mad Dog" Delgado, were arrested. Nucky told the officers he had gone to the area to buy marijuana. As he and Mad Dog were leaving, a shooting occurred. They fled. Other deputies found several .45-caliber shell casings and spent shotgun cartridges at 45533 Corkwood (the scene of Citizen's murder). Witnesses said only that two rival gangs had been in a gunfight, but a confidential informant who lived in the area identified many of the gunfight participants by their monikers -- including Blood members Twan, Wicked, Mario,

Slim and Shack, and Crip members Nucky and Mad Dog. The informant had "seen these people on many prior occasions and [said] they were 'always around.'" Police records confirmed that Nucky and Mad Dog were admitted Crips.

That same night, Washington was treated in a hospital emergency room for a gunshot wound, and he told two deputies someone shot him on Cedar Avenue, a block east of Corkwood. Later that night, he told Deputy Patterson he had been shot by a stray bullet on a street in Palmdale, where no shooting had been reported.

On **December 22**, Slim was shot in front of 45423 Cedar, an address known to Detective Costleigh as a Blood hangout. At the hospital, Slim refused to tell the deputies anything, stating, "I'll take care of it myself." A confidential informant identified the shooting location as Shakir "Shack" Uqdah's house, a fact Detective Patterson confirmed with Shack's mother. The confidential informant also said that after Slim was shot, a Black man ran to a waiting car driven by a Black woman and they drove north on Cedar. Another witness saw another Black man run from Shack's house with a pistol and fire at the fleeing car. Four .45-caliber shell casings were later recovered from the driveway, and a loaded .45-caliber pistol was found under a bed during a search of Shack's home for "possible gunshot victims."

Based on these facts, Detective Costleigh opined that since the shooting of Citizen in August 2003, there had been an "ongoing gang shooting war" between the Pacoima Piru Bloods and the Crips. He said that a gang member

who uses a weapon in a gang war generally needs access to it and does not permanently dispose of it. He may borrow a weapon or use his own but, either way, he passes it after use to a fellow gang member for safekeeping until he believes he is no longer likely to be detained or searched as a suspect in a particular shooting incident.

**B.**

The search warrant was presented and signed on **March 7, 2003**.<sup>1</sup> The warrant was executed on March 11, and a return was filed on March 17, listing the items taken from Washington's home, including mail addressed to Washington, a California identification card in the name of "Tony Wash," rock cocaine, marijuana (loose and in baggies), a safe, a scale, small plastic baggies, a cellular phone, a nine-millimeter "Smith and Wesson" pistol with magazine and eight live rounds of nine-millimeter ammunition, a large amount of cash, photos depicting gang members with graffiti-style writing, a belt buckle with the letter "P," and red hats and bandana.

**C.**

By amended information, Washington was charged with possession for sale of cocaine base (count 1), possession of marijuana for sale (count 2), possession of cocaine while armed with a firearm (count 3), child abuse (count 4), and possession of a firearm by a felon (count 5).<sup>2</sup> Washington moved to

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<sup>1</sup> In addition to authorizing a search of Washington's house, the warrant authorized the search of Pacoima Piru Blood gang members Shack's and Slim's houses and rival Crip gang member Nucky's house.

<sup>2</sup> Candi Williams was also charged in counts 1 through 4, but she is not a party to this appeal.

quash and traverse the search warrant, claiming lack of probable cause (Pen. Code, § 1538.5, subd. (a)(1)(B)(iii)) and, specifically, staleness of the information in the affidavit. Later, Washington requested a hearing so he could cross-examine Detective Costleigh.

At the hearing, Detective Costleigh testified that he assisted the homicide division in its investigation of Citizen's homicide (suggesting "Twan" was Washington). He knew that Washington was arrested on September 1, 2002, on outstanding warrants and interviewed, but he was not aware that a warrant had been executed at Washington's home on that day.

The search warrant Detective Costleigh sought in March 2003 was based on "an ongoing war between rival gangs." He began amassing the information in the affidavit on the day of Citizen's shooting (August 31, 2002), and began the "lengthy and involved" preparation of the affidavit after Slim was shot on December 22. He was prepared to serve the warrant in January 2003, but his mother died on January 16, and he took bereavement leave. When he returned around February 1 and began to gather the personnel needed for the operation, his bureau gave him the date of March 11.

Beginning about the third week of February and continuing to just days before he applied for the warrant, Costleigh attempted to verify and update the information in his affidavit. He personally drove by Washington's house several times, took photos, and saw someone look out the door, duck back in, and close the door. Detective Dorsey drove by Washington's house several times and saw people dressed in gang-type attire and fresh graffiti in the alley

behind the house. These additional observations were not included in the affidavit.

The trial court found the "issue of staleness . . . [was] marginal [but that there was] no question about [Detective] Costleigh's good faith," and denied Washington's motion to quash and traverse the search warrant. As noted at the outset, Washington then pleaded no contest to counts 1, 2 and 4, admitted the gang enhancement allegations ancillary to counts 1 and 2, and was sentenced to state prison for an aggregate term of seven years.

## **DISCUSSION**

Washington contends his motion to quash and traverse the search warrant should have been granted because the information contained in the supporting affidavit was so stale (A) that there was no probable cause for issuance of the warrant and (B) that the good faith exception could not apply. We disagree.

### **A.**

A warrant is properly issued when there is "probable cause to believe that the material sought to be seized will be on the premises to be searched when the warrant is served." (*People v. Gibson* (2001) 90 Cal.App.4th 371, 380.) While the general rule is that information remote in time may be deemed stale and unreliable, the passage of time does not necessarily deprive old information of all value, particularly where special circumstances would justify a reasonable person's conclusion that the alleged illegal activity persisted up to the present.

Staleness depends on the particular facts of the case. (*Ibid*; *People v. Hulland* (2003) 110 Cal.App.4th 1646, 1652; *People v. Mikesell* (1996) 46 Cal.App.4th 1711, 1718.)

While some of the information in Detective Costleigh's affidavit recounted events as old as seven months, the affidavit in its totality told an unfolding story of gang retaliation for the murder of Crip member Germaine Citizen. Starting with the murder itself, the detective laid out the investigation (including the identification of rival gang members, prior attacks on the victim by rival Blood gang members, and the victim's identification of "Twan and them" as the shooters), the details of subsequent criminal activity (two more shootings involving Twan and other Bloods and Crips), and the detective's opinions as an experienced gang investigator about the rival gangs, gang wars, and the passing of weapons between gang members. This information established ongoing criminal activity and, as such, was sufficient for issuance of the warrant. (*People v. Gibson, supra*, 90 Cal.App.4th at pp. 380-381.)

We reject Washington's claim that Detective Costleigh "knew or should have known" that Washington's house was searched on September 1, 2002, that the weapon used in the shooting of Citizen was not found at that time, and that the detective's failure to reveal these facts in his affidavit was somehow misleading. The detective testified that he knew Washington was arrested on September 1, but that he did not know Washington's house was searched. The search and arrest were conducted by the homicide division, and he (a member of a gang division) participated only to the extent he had suggested that "Twan" was Washington, and Washington does not explain how Detective Costleigh



should have known about the search or the results of the search. In any event, given the detective's opinion that weapons are passed around among gang members, the fact that a certain weapon was not found at Washington's residence on one occasion does not mean it would not be found there months later. For this reason, we do not agree that the omitted information would have caused the magistrate to deny the warrant application. (*People v. Gibson, supra*, 90 Cal.App.4th at pp. 381-382.)

**B.**

Even assuming the warrant did not establish probable cause, we would conclude, as did the trial court, that the good faith exception applies. "[E]vidence obtained in violation of the Fourth Amendment need not be suppressed where the officer executing the warrant did so in objectively reasonable reliance on the warrant's authority. The test for determining whether the exception applies is 'whether a reasonably well trained officer would have known that the search was illegal despite the magistrate's authorization.'" (*People v. Hulland, supra*, 110 Cal.App.4th at p. 1653.)

After preparation of the affidavit over many months of continuing criminal activity, Detective Costleigh was ready to present the warrant to a magistrate, but his mother's death required him to take a leave. Upon his return, he and other law enforcement officers updated the information in the warrant and confirmed continuing suspicious activity at Washington's residence. Although the actions of law enforcement performed just before issuance of the warrant were not reported in the Detective's affidavit, they established the detective's

objectively reasonable reliance on the authority of the warrant. (*People v. Mikesell, supra*, 46 Cal.App.4th at p. 1719.)

**DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

SPENCER, P.J.

SUZUKAWA, J.\*

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\*Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.